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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re the Marriage of WILLIAM and
GAIL LEE WRIGHT.

WILLIAM WRIGHT,

Appellant,

v.

GAIL LEE WRIGHT,

Respondent.

G056095

(Super. Ct. No. 14D011133)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Michael A. Fisher, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Law Offices of Marc E. Mitzner, Marc Edward Mitzner and Christina Doemeny Jones for Appellant.

Snell & Wilmer, Richard A. Derevan, Todd E. Lundell and Jing (Jenny) Hua for Respondent.

The court entered a judgment of dissolution of the marriage of appellant William Wright (husband) and respondent Gail Lee Wright (wife). Husband appeals on the grounds the judgment did not properly set out the parties' agreement as to one of its terms and the court erred by denying his request to insert additional language in the judgment. We disagree and affirm.

FACTS AND PROCEDURAL HISTORY

In 2015 husband filed a petition for dissolution of the parties' 30-plus year marriage. The case was tried over several days to a judge pro tem. During trial the parties settled some of the issues and the agreements were read into the record. The court resolved the remaining issues at the end of the trial and issued a written ruling on them. The issues that were settled were not included in the written ruling. There is no reporter's transcript of the settlement agreements nor of the trial. The court ordered wife to prepare the judgment.

A copy of the proposed judgment is not in the record but the record reflects the court signed the judgment as prepared by wife. The judgment incorporated a community balance sheet that listed the parties' assets and debts. According to the judgment the parties' stipulated to "the identification, characterization, valuation and distribution" of the assets and debts so listed. The judgment also states "all property transferred hereunder is transferred subject to all existing encumbrances and liens" and required the transferee to "indemnify and hold harmless the other party from any claim or liability that the other party may suffer or may be required to pay on account of such encumbrances and liens."

As one of the settled issues, the parties agreed the family residence (Residence) would be awarded to wife. After receiving the proposed judgment, seven weeks after the court issued its written ruling, husband wrote to the court requesting the judgment include a term to relieve husband from any liability for the loan securing the Residence. Wife responded with a letter opposing the request.

The court ordered the parties to submit points and authorities as to whether it had jurisdiction to “make an order on an issue not previously presented to the Court for determination” and set out a briefing schedule. After the final due date the court issued another order noting it had not received any pleadings and assumed the issue had been resolved. It ordered wife to present a judgment for signature.

Subsequently husband submitted a declaration raising the same issue, which the court noted was not timely and was not points and authorities as originally ordered. Wife again opposed the request and submitted a judgment. In its order the court allowed husband time to object to the judgment, noting objections had to be specific and include the language husband believed should be included.

Husband filed an objection, in which he stated his only complaint was the judgment did not contain language requiring wife to remove him from the loan on the Residence; he asked that the judgment require her to “make reasonable efforts” to do so. The court found the objection was defective in several respects. It did not help the court “understand exactly . . . what language has been omitted.” Further, the only citation to authority, Family Code section 2553, did not address the court’s jurisdiction question. Additionally, the language in the objection was inconsistent. The court noted it was “tempted to overrule” the objections and sign the judgment but noted husband’s “strong message” certain language be included. It ordered the parties to meet and confer and if they could not resolve the issue, a hearing would be set.

The court subsequently conducted a hearing. It found husband was seeking to amend the agreement, contrary to husband’s claim he sought only to clarify the judgment. It found “when the agreement was read into the record, the parties did not make a specific notation that the obligation [wife] was assuming on the [Residence] was to be refinanced.” “Had that been part of the parties[’] agreement, it would have been read into the record [Husband] is an intelligent man. . . . Had that been part of the agreement, I’m certain that he would have made a notation to his attorney to include that

in the oral agreement that was recited into the record, but it wasn't. So [husband] seems to be saying at this time, 'Oh, I forgot to include that term in the agreement and I want to add it now.'" The court observed it would be unfair to wife to change the terms of the agreement at that time. The judge stated, "I've been practicing family law for now for - - this is my 30th year, and it's never been the assumption that somebody who takes an asset and assumes the debt has to refinance the debt."

The court explained that if the issue had been submitted for decision, requiring wife to refinance the mortgage would have been within its power. But the court had not decided the issue, and it had no power to make an order on a new issue after the case was submitted and decided. The court then signed the judgment.

DISCUSSION

Husband claims the issue here is whether the parties reached an agreement as to the Residence and faults the court for failing to make such a determination. He contends the judgment does not include the complete agreement of the parties because it was "his understanding" wife would remove him from liability on the mortgage on the Residence. Arguing the claim a different way, husband also asserts the court erred by denying his request to add additional language to the judgment. No matter how the issue is posited, there are several problems with husband's argument.

First, without a reporter's transcript, we have no record of what the parties' actual agreement was. A "fundamental principle" of appellate law is the trial court judgment is presumed correct and the appellant has the burden to show, "on the basis of the record presented to the appellate court, that the trial court committed an error that justifies reversal of the judgment." (*Jameson v. Desta* (2018) 5 Cal.5th 594, 608-609; *State Comp. Ins. Fund v. WallDesign Inc.* (2011) 199 Cal.App.4th 1525, 1528, fn. 1 ["if it is not in the record, it did not happen"].) "Failure to provide an adequate record on an issue requires that the issue be resolved against [the appellant]." (*Jameson*, at p. 609.)

Even if we consider the merits of the claim husband cannot prevail.

““Marital settlement agreements incorporated into a dissolution judgment are construed under the statutory rules governing the interpretations of contracts generally.”” (*In re Marriage of Hibbard* (2013) 212 Cal.App.4th 1007, 1012.) A stipulation, like a contract, “must be interpreted so as to give effect to the mutual intent of the parties.” (*Toste v. CalPortland Construction* (2016) 245 Cal.App.4th 362, 366.) ““[I]t is the objective intent, as evidenced by the words of the contract, rather than the subjective intent of one of the parties, that controls interpretation” [citation]. The parties’ undisclosed intent or understanding is irrelevant to contract interpretation.” (*Iqbal v. Ziadeh* (2017) 10 Cal.App.5th 1, 8.)

Throughout his brief, husband repeatedly points to his “understanding” and his “belief” wife would remove him from the mortgage. Not once does he state the parties actually agreed on such a term nor does he direct us to anywhere in the record to support such an agreement. As shown above, his subjective understanding and belief are not sufficient to form an agreement.

We are not persuaded by husband’s assertion the judgment necessarily had to include a provision to remove him from the mortgage just by virtue of the fact wife took the liability for the debt. Husband provided no authority to support this proposition and we, as well as the trial court, know of none.

Likewise, we reject the contention this was “an unresolved issue” about which the court should have held a hearing. The fact family law cases are equitable proceedings has no bearing on this claim. Similarly, that “the court may make any orders the court considers necessary to carry out the purposes of this division” (Fam. Code, § 2553) does not mean it was proper to make husband’s requested order here.

Here the issue turns on whether husband proved his removal from liability on the mortgage was a term of the settlement. Thus, we must decide “whether the evidence compels a finding in favor of [husband] as a matter of law. [Citations.]

Specifically, the question becomes whether [husband's] evidence was (1) "uncontradicted and unimpeached" and (2) "of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding." (Sonic Manufacturing Technologies, Inc. v. AAE Systems, Inc. (2011) 196 Cal.App.4th 456, 466.) Husband did not satisfy either of these conditions. The court heard the recital of the settlement, which did not include a provision for wife to remove husband from the mortgage. It specifically found removal of husband from the mortgage was not part of the parties' agreement.

Husband's request to modify the judgment to require wife to remove him from the mortgage is in effect a request for the court to rewrite the parties' agreement, which it cannot do. "Courts will not add a term about which a contract is silent." (Dameron Hospital Assn. v. AAA Northern California, Nevada & Utah Ins. Exchange (2014) 229 Cal.App.4th 549, 569.) The court's function is to decide what is included in the contract, not to add an omitted provision. (Ibid.) Courts "do not have the power to create for the parties a contract that they did not make and cannot insert language that one party now wishes were there." (Ibid.) "[C]ourts cannot make better agreements for parties than they themselves have been satisfied to enter into or rewrite contracts because they operate harshly or inequitably. It is not enough to say that without the proposed implied covenant, the contract would be improvident or unwise or would operate unjustly. Parties have the right to make such agreements." (Id. at pp. 569-570.)

DISPOSITION

The judgment is affirmed. Wife is entitled to costs on appeal.

THOMPSON, J.

WE CONCUR:

O'LEARY, P. J.

BEDSWORTH, J.